

[Redacted]
Scottish Government
Atlantic Quay
150 Broomielaw
Glasgow
G2 8LU

EDF Renewables
Level 7 Atria 1
144 Morrison Street
Edinburgh
EH3 8EX

19th January 2021
Reference: EC00003108

Dear [Redacted]

CONSENT UNDER S36 OF THE ELECTRICITY ACT 1989 AND DEEMED PLANNING PERMISSION UNDER S57(2) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 FOR THE CONSTRUCTION AND OPERATION OF THE CLOICH FOREST WIND POWERED ELECTRICITY GENERATING STATION IN THE COUNCIL AREA OF SCOTTISH BORDERS

We refer to the discussion relating to extension of the S36 permission described above.

The consent for Cloich Wind Farm was granted on 8th July 2016 to Cloich Wind Farm LLP, which was purchased by EDF Energy Renewables Limited (Registered office: 40 Grosvenor Place, London, SW1X 7EN, Company No. 06456689) in 2017.

Condition 2 of the Section 36 consent sets a time limit for the commencement of development to be not later than 5 years from the date of consent or in substitution such other period as the Scottish Ministers may direct in writing. The 5 year period will expire on the 8th July 2021.

EDF Energy Renewables Limited remains committed to developing a wind farm at the Cloich Wind Farm site. We are currently preparing an application for “Cloich Forest Wind Farm” which will seek permission for the use of larger turbines than those consented for the original Cloich Wind Farm on the same site.

It is likely that the route to market for the Cloich Forest Wind Farm will be through the Contracts for Difference Allocation Round 4 (CFD AR4), for which qualification and bids are currently anticipated to be submitted in Q3 2021. The conclusion of the initial bidding process might be completed by the end of 2021, although this is not certain at this point in time. Further bidding rounds may follow this initial round. To qualify for CFD AR4, there must be an extant consent for a wind farm in place (S36 or Planning Permission) at the site in question.

Because it is likely that there will not be a final decision on Cloich Forest Wind Farm before the existing consent for the Cloich Wind Farm expires on the 8th July 2021, we would like to extend the S36 consent to ensure that it remains extant for the duration of the CFD process.

This letter formally requests an extension to the Cloich Wind Farm S36 Consent (ref EC00003108) for two years until 8th July 2023 to ensure that there is an extant consent in place to comply with the criteria for CFD eligibility and to cover the period that Cloich Forest Wind Farm may be under determination.




Please let me know if you require any additional information to support your consideration of this request.

Yours sincerely

[REDACTED]

[Redacted]

 Digitally signed by [Redacted]
Date: 2021.01.19 16:40:47 Z



[Redacted]

Development Manager

[Redacted]

EDF Renewables, United Kingdom

Mobile: [Redacted]

www.edf-re.uk

[Redacted]

Energy and Climate Change Directorate
Energy Consents Unit
2 June 2021

Cabinet Secretary for Net Zero, Energy and Transport

**REQUEST TO EXTEND THE IMPLEMENTATION DATE OF THE SECTION 36
CONSENT FOR THE CLOICH FOREST WIND POWERED ELECTRICITY
GENERATING STATION IN THE COUNCIL AREA OF SCOTTISH BORDERS.**

Purpose

1. To seek your approval to extend the date by which development must be commenced for the consented Cloich Forest Wind Farm in the Scottish Borders.

Priority

2. **Urgent.** The consent requires to be extended prior to the 8 July 2021

Reasons for Request

3. Section 36 consent was granted by Scottish Ministers on 8 July 2016 to Cloich Wind Farm LLP for the construction and operation of the Cloich Forest Wind Farm, with development to commence within a period of 5 years.

4. On 19 January 2021, EDF Energy Renewables Limited (EDF ER) who purchased Cloich Wind Farm LLP (“the Company”) in 2017, requested Scottish Ministers to consider their request for an extension of time to commence development of the Section 36 consent for the Cloich Forest Wind Farm by **2 years to 8 July 2023**.

5. EDF ER are currently preparing to submit a new application at the Cloich Forest site which will seek permission to use larger turbines than those consented for the original Cloich Forest Wind Farm. EDF ER consider it unlikely that there will be a final decision on this new application before the existing time period for implementation of the section 36 consent for Cloich Forest Wind Farm expires on the 8th July 2021.

6. As indicated by EDF ER it is likely the route to market for the Cloich Forest Wind Farm will be through the Contracts for Difference Allocation Round 4 (CFD-AR4), for which qualification and bids are likely to be submitted later in 2021 (Annex B). To qualify for CFD-AR4, EDF ER have advised that there must be a consent for a wind farm in place at the site in question.

7. EDF ER would like to extend the period, set out in a condition imposed on the s36 consent which will, in their view, allow them to comply with the criteria for CFD eligibility and to cover the period that the new Cloich Forest wind farm application may be under consideration and subsequent determination.

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8. It would not be for Scottish Government officials or Scottish Ministers to comment on the eligibility or otherwise of bids by Companies to Contracts for Difference as the [Electricity Market Reform Delivery Body \(EMR\)](#) have the responsibility of vetting applications.

Background to the Consented Development

9. The application for the Cloich Forest Wind Farm development was subject to a wide ranging consultation. Scottish Borders Council objected to the application and did not withdraw their objection. Consequently, in accordance with the terms of paragraph 2(2) (a) of schedule 8 of the Electricity Act, a public inquiry was held.

10. The Reporters' report of the public inquiry was received by the Energy Consents Unit on 17 February 2016 in which the Reporters recommended that consent be granted. Scottish Ministers granted section 36 consent on 8 July 2016 to Cloich Wind Farm LLP (later bought over by the EDF ER as set out above). A condition was imposed on the section 36 consent requiring that development commenced within 5 years or "*in substitution such other period as the Scottish Ministers may hereafter direct in writing.*"

11. Planning permission was also deemed to be granted by Scottish Ministers for the development under section 57 of the Town and Country Planning (Scotland) Act 1997 ("the Planning Act"). The planning permission was subject to a direction, under section 58(2) of the Planning Act, requiring that the development was to be commenced within 5 years, after which the planning permission would lapse.

12. The consent is to construct and operate the Cloich Forest Wind Powered Electricity Generating Station with a generating capacity over 50 MW (anticipated to be around 54 Megawatts (MW)). The principal components and related ancillary developments of the Cloich Wind Farm comprise:

- 18 wind turbines, each of no more than 115 metres in tip height, with associated concrete turbine foundations and associated crane pads;
- Permanent lattice steel anemometer mast;
- Upgraded vehicular and pedestrian access;
- New onsite access tracks;
- Upgraded onsite access tracks;
- Two borrow pits;
- temporary works (construction compound, site access and security compound and temporary laydown area);
- Control building, substation and underground cabling;
- Wind turbine transformer high voltage kiosks; and
- Modifications to the entrance to and from the D16 road which leads to Cloich Forest from A703

13. The Cloich Forest Wind Farm development has generated strong feelings within the local community and officials in Energy Consents have received correspondence in relation to EDF ER's request for the extension of time to commence development. Chairman of a local community council, who was also a member of the Eddleston Third Party Objector Group, who were an interested party at the Cloich Forest wind farm public

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inquiry, and a local councillor on behalf of her constituents have raised their concerns which include asking on what grounds Scottish Ministers would consider granting the Company's request, questions on the eligibility of the Company's CFD bid, general uncertainty regarding implementation of the consent within a reasonable period and the outstanding issues still to be resolved through discharge of conditions attached to the original consent.

Extending Commencement of Development

14. Although the terms of Condition 2 of the Section 36 consent allow Scottish Ministers to extend the 5 year period before which construction of the section 36 consent must commence they have no powers to extend the period within which development must be commenced in respect of the deemed planning permission which has been set by a direction. As set out above, Scottish Ministers originally directed that planning permission was to lapse, if development had not commenced, by the end of a 5 year period ending in **8 July 2021**.

15. However, since the original direction was made, the Coronavirus (Scotland) Act 2020 (Coronavirus Act) has come into force (on 7 April 2020) providing powers and measures which have helped to protect the public, maintain essential public services and support the economy in the face of the unprecedented and ongoing public health and economic challenges created by the pandemic. The Coronavirus Act states that if planning permission would lapse during the emergency period because no development has been commenced in time, as is the case for Cloich Forest Wind Farm, then the planning permission would not lapse until the end of the "extended" period.

16. Currently, the extended period ends on **31 March 2022**. The planning permission would thereafter lapse if development has not commenced before the end of the extended period. Measures under the Coronavirus Act are due to be reviewed again before the end of September 2021. Further review may give the effect of further extending the period within which planning permission would lapse but this is as yet an unknown.

17. Therefore, as it stands at the moment requirements to commence development, within a particular period, in respect of the section 36 consent and the deemed planning permission, are misaligned.

Recommendation

18. Officials consider there is no reason why Scottish Ministers may not accede to an extension beyond the terms of the condition attached to the section 36 consent, thereby keeping open the possibility of EDF ER securing a route to market for any forthcoming wind farm application which may be consented on the Cloich Forest site. However, in light of the current extended timescale afforded to the implementation period for the planning period by virtue of the Coronavirus Act measures, it is recommended that Scottish Ministers agree to extend the commencement date of the Cloich Forest Wind Farm section 36 consent to 31 March 2022. This gives effect, in part, to EDF ER's request by extending the implementation period of the current section 36 consent well beyond the anticipated submission date of their new application, it will provide clarity to affected communities on the status of Cloich Forest Wind Farm and it would align the implementation period for the section 36 consent and deemed planning permission. EDF ER would not be precluded

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from requesting a further extension if circumstances in respect of the CFD allocation round, timelines for the new application or measures in respect of the Coronavirus Act were to change.

The following annexes have been attached for your information

- ANNEX A: Process for Extending the Implementation Period
ANNEX B: Draft Decision letter.
ANNEX C: Request Letter for extension to the commencement of development period.
ANNEX D: Section 36 Consent dated 8 July 2016

[Redacted]

Energy and Consents Unit
2 June 2021

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Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Cabinet Secretary for Net Zero, Energy and Transport	X				
Minister for Environment, Biodiversity and Land Reform			X		
Minister for Transport & Veterans			X		
Minister for Public Finance, Planning and Community Wealth					X
DG Economy DG Scottish Exchequer Mailbox DECC: Operations Team Mailbox Kersti Berge, Energy & Climate Change Andy Hogg – Energy Industries William Black – Energy Consents [Redacted] [Redacted] [Redacted] [Redacted] Norman Macleod – SGLD Kirsty Jamieson, SGLD Bill Ellis – Planning Callum McCaig, Special Adviser SPADS Admin Communications, Economy					

ANNEX A

Extending the period associated with the Condition

1. As set out above, the Scottish Ministers are afforded discretion in respect of extending the period of time within which the company must commence development of their s36 consent as a consequence of the wording of the condition which states;

“The commencement of development shall be no later than five years from the date of this consent, or in substitution such other period as the Scottish Ministers may hereafter direct in writing. Written confirmation of the intended date of commencement of development shall be provided to the Planning Authority and Scottish Ministers no later than one calendar month before that date.

Reason: To avoid uncertainty and ensure that the consent is implemented within a reasonable period”.

2. No formal process requires to be adopted for such a request, nevertheless officials in Energy Consents ordinarily notify the statutory consultative bodies who are engaged in Electricity Act consents to ensure there are no “unknowns”, in respect of their remits, which would preclude Ministers from authorising such a request.

3. Therefore; following receipt of the request for an extension to the commencement date of the section 36 consent for the Cloich Forest Wind Farm, the views of SEPA, NatureScot, Historic Environment Scotland (HES) and Scottish Borders Council as the relevant Planning Authority were sought.

4. **SEPA** did not respond. As a consequence of a significant cyber-attack affecting its contact centre, internal systems, processes and communications, SEPA have been unable to respond to Energy Consent Officials to date and further engagement will very much depend on SEPA’s recovery plan progress.

5. **NatureScot** had no comments.

6. **HES** advised that from their perspective, there is no change to baseline that would alter their previous advice. The proposed time extension would not alter affects as previously understood for their interests.

7. **Scottish Borders Council** considered the implications there may be of extending the commencement period for the scheme and undertook internal consultations with Landscape, Ecology, Archaeology, Roads, Access and Environmental Health Officers. There was no indication from these internal colleagues, in relation to their different remits, that there would be any changed environmental or other impacts where they would advise no extension to commencement time. Consequently, they have no comments to make upon the request which remains a matter for Energy Consents.

8. Scottish Borders Council suggested, however, that the cumulative baseline of any wind farms consented around the Cloich site is checked and considered before Scottish Ministers make their decision, especially with regard to sites in adjoining Local Authority

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areas. Scottish Borders Council said “In the Borders, ECU are aware of Scawd Law, Ditcher Law and Greystone Knowe which have been through Scoping stages, all of which appear to be potential s36 schemes.”

Energy Consents officials have considered Scottish Borders Council’s comments and consider that Ministers may be satisfied that any proposed developments coming into the planning system subsequent to Cloich Forest Wind Farm would be obligated to consider the cumulative impacts of their proposed development with the consented Cloich Forest Wind Farm.

Annex B – draft decision letter

Energy and Climate Change Directorate
Energy Consents Division



T: 0131-244-1258
E: [Redacted]

Mr Richard Fisher
Development Manager
EDF Energy Renewables Limited
Alexander House
1 Mandarin Road
Rainton Bridge Business Park
Houghton le Spring
Sunderland
DH4 5RA

XX 2021

Dear Mr Fisher

Thank you for your letter dated 19 January 2021 on behalf of Cloich Wind Farm LLP (“the Company”) seeking an extension to the date of commencement of the development of the consent for the Cloich Forest Wind Farm from 5 years to 7 years.

Scottish Ministers note the original consent dated 8 July 2016 was in favour of Cloich Wind Farm LLP and note EDF Energy Renewables Limited purchased Cloich Wind Farm LLP in 2017.

As you are aware, the consent for the Cloich Forest Wind Farm development was granted on 8 July 2016 by Scottish Ministers and states at condition 2 of Annex 2:

“Commencement of development

The commencement of development shall be no later than five years from the date of this consent, or in substitution such other period as the Scottish Ministers may hereafter direct in writing. Written confirmation of the intended date of commencement of development shall be provided to the Planning Authority and Scottish Ministers no later than one calendar month before that date.

Reason: To avoid uncertainty and ensure that the consent is implemented within a reasonable period”.

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Scottish Ministers contacted Scottish Borders Council, SEPA, NatureScot and Historic Environment Scotland (HES).

The responses have been published on the Energy Consents Website - www.energyconsents.scot

The Scottish Ministers Considerations

Although the terms of Condition 2 of the Section 36 consent allow Scottish Ministers to extend the 5 year period before which construction of the section 36 consent must commence they have no powers to extend the period within which development must be commenced in respect of the deemed planning permission which has been set by a direction. Scottish Ministers originally directed that planning permission was to lapse, if development had not commenced, by the end of a 5 year period ending in **8 July 2021**.

Since the original direction was made, the Coronavirus (Scotland) Act 2020 (Coronavirus Act) has come into force providing powers and measures which have helped to protect the public, maintain essential public services, and support the economy in the face of the unprecedented, and ongoing public health and economic challenges created by the pandemic. The Coronavirus Act states that if planning permission would lapse during the emergency period because no development has been commenced in time, as is the case for Cloich Forest Wind Farm, then the planning permission would not lapse until the end of the “extended” period.

Currently, the extended period ends on **31 March 2022**. The permission would thereafter lapse if development has not commenced before the end of the extended period. Measures under the Coronavirus Act are due to be reviewed again before the end of September 2021. Further review may give the effect of further extending the period within which planning permission would lapse but this is as yet an unknown.

Therefore, as it stands at the moment requirements to commence development, within a particular period, in respect of the section 36 consent and the deemed planning permission, are misaligned.

Scottish Ministers have considered the request and are satisfied that authorising an additional time period to 31 March 2022 for the commencement date of the section 36 consent is appropriate in the circumstances of the information provided in respect of the potential route to market which may enable a project at this site to be deployed and in light of the changing circumstances in respect of the Coronavirus Act.

Scottish Ministers therefore direct that for the purposes of condition 2 of the Cloich Forest Wind Farm section 36 consent, commencement of development must be no later than 31 March 2022.

In terms of condition 2, if Commencement of the Development does not occur by 31 March 2022 the application site must (unless otherwise agreed in writing by the Scottish Ministers), within 6 months of the expiry of that period, be fully reinstated by the Company

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to the specification and satisfaction of the Scottish Ministers, in consultation with the Planning Authority.

The section 36 consent Commencement of the Development must be no later than 31 March 2022.

Yours sincerely,

[Redacted]

Energy Consents Unit

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Annex C - Original correspondence from EDF Energy Renewables Limited



[Redacted]

Scottish Government
Atlantic Quay
150 Broomielaw
Glasgow
G2 8LU

EDF Renewables
Level 7 Atria 1
144 Morrison Street
Edinburgh
EH3 8EX

19th January 2021

Reference: EC00003108

Dear [Redacted]

CONSENT UNDER S36 OF THE ELECTRICITY ACT 1989 AND DEEMED PLANNING PERMISSION UNDER S57(2) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 FOR THE CONSTRUCTION AND OPERATION OF THE CLOICH FOREST WIND POWERED ELECTRICITY GENERATING STATION IN THE COUNCIL AREA OF SCOTTISH BORDERS

We refer to the discussion relating to extension of the S36 permission described above.

The consent for Cloich Wind Farm was granted on 8th July 2016 to Cloich Wind Farm LLP, which was purchased by EDF Energy Renewables Limited (Registered office: 40 Grosvenor Place, London, SW1X 7EN, Company No. 06456689) in 2017.

Condition 2 of the Section 36 consent sets a time limit for the commencement of development to be not later than 5 years from the date of consent or in substitution such other period as the Scottish Ministers may direct in writing. The 5 year period will expire on the 8th July 2021.

EDF Energy Renewables Limited remains committed to developing a wind farm at the Cloich Wind Farm site. We are currently preparing an application for "Cloich Forest Wind Farm" which will seek permission for the use of larger turbines than those consented for the original Cloich Wind Farm on the same site.

It is likely that the route to market for the Cloich Forest Wind Farm will be through the Contracts for Difference Allocation Round 4 (CFD AR4), for which qualification and bids are currently anticipated to be submitted in Q3 2021. The conclusion of the initial bidding process might be completed by the end of 2021, although this is not certain at this point in time. Further bidding rounds may follow this initial round. To qualify for CFD AR4, there must be an extant consent for a wind farm in place (S36 or Planning Permission) at the site in question.

Because it is likely that there will not be a final decision on Cloich Forest Wind Farm before the existing consent for the Cloich Wind Farm expires on the 8th July 2021, we would like to extend the S36 consent to ensure that it remains extant for the duration of the CFD process.

This letter formally requests an extension to the Cloich Wind Farm S36 Consent (ref EC00003108) for two years until 8th July 2023 to ensure that there is an extant consent in place to comply with the criteria for CFD eligibility and to cover the period that Cloich Forest Wind Farm may be under determination.

EDF Energy Renewables Limited

Registered No 06456689

Registered Office: Alexander House, 1 Mandarin Road, Rainton Bridge Business Park, Houghton le Spring, Sunderland DH4 5BA

www.edf-re.uk

Page 1

of 2

LETTER TEMPLATE NUMBER: ER-DOC-TEM-0010-P01



Please let me know if you require any additional information to support your consideration of this request.

Yours sincerely

[REDACTED]

[Redacted]

Digitally signed by [Redacted]
Date: 2021.01.19 16:40:47 Z



[Redacted]

Development Manager

[Redacted]

EDF Renewables, United Kingdom

Mobile: [Redacted]

www.edf-re.uk

ANNEX D

Energy and Climate Change Directorate
Electricity Division

T: 0300-244 1064
E: Frances.Pacitti@gov.scot



Cloich Wind Farm LLP
2 Hunting Gate
Wilbury Way
Hitchin
Hertfordshire
SG4 0TJ

8 July 20216

Dear Sirs,

CONSENT UNDER S36 OF THE ELECTRICITY ACT 1989 AND DEEMED PLANNING PERMISSION UNDER S57(2) OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 FOR THE CONSTRUCTION AND OPERATION OF THE CLOICH FOREST WIND POWERED ELECTRICITY GENERATING STATION IN THE COUNCIL AREA OF SCOTTISH BORDERS

Application

I refer to the Application made by Cloich Wind Farm LLP, a company incorporated under the Companies Acts with company number OC353594 and having its registered office at 2 Hunting Gate, Wilbury Way, Hitchin SG4 0TJ ("the Company") dated 8 October 2012 for consent under section 36 of the Electricity Act 1989 ("the Electricity Act") for the construction and operation of Cloich Forest Wind Farm, 5 km north-west of Peebles with a generating capacity which exceeds 50MW.

The Company submitted Supplementary Environmental Information on 31 January 2014 amending their Application by reducing the height of their candidate turbines from 132m to 115m and micro-siting turbines reducing the spread of development within the site from 267 hectares to 171 hectare. This reduced the nominal installed capacity from 61.2MW to 54MW. The Application as amended would be for 18 turbines with a generating capacity which exceeds 50MW.

This letter contains the Scottish Ministers' decision on the Application.

Planning Permission

In terms of section 57(2) of the Town and Country Planning (Scotland) Act 1997 Scottish Ministers may on granting consent under section 36 of the Electricity Act direct that planning permission is deemed to be granted in respect of the development for which section 36 consent is granted.

Consultation

In accordance with the EIA Regulations on 8 January 2012 the Company submitted an Environmental Statement. In accordance with statutory requirements, advertisement of the Application and Environmental Statement was made in the local and national press and the opportunity given for those wishing to make representations to do so.

Under paragraph 2(1) of Schedule 8 to the Electricity Act, notice of the Application must be served on the relevant Planning Authority and notice was served on Scottish Borders Council. Notifications were also sent to SNH and SEPA. A wide range of other relevant organisations were also notified and consulted.

In addition to representations by the Planning Authority, SNH and SEPA, a total of 338 public representations were received, 329 were objections to the Application and 9 were of support. A summary of consultation responses and third party representations are contained within the Public Local Inquiry Report.

Public Local Inquiry (PLI)

Scottish Borders Council objected to the Application and in accordance with paragraph 2(2) of Schedule 8 to the Electricity Act a PLI was held.

The PLI was held in the Peebles Hydro on the 26 and 29 May and on 2 June 2015 with post inquiry exchanges of submission concluding by 14 July 2015. The Reporters conducted accompanied inspections of the site on 29 April and 3 June 2015. In addition the Reporters carried out unaccompanied site inspections of the area before, and after the hearing sessions.

The Report was received by the Scottish Ministers on 17 February 2016. The Reporters' recommendation is that the Application for section 36 consent for Cloich Forest be granted.

No claims for expenses were made by any party to the Inquiry.

Environmental matters

The Scottish Ministers are satisfied that Environmental Statement and Supplementary Environmental Information, has been produced in accordance with the EIA Regulations and that the applicable procedures regarding publicity and consultation laid down in the those Regulations have been followed.

Scottish Ministers have had regard to the desirability of preserving the natural beauty of the countryside, of conserving flora, fauna, and geological and physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic, or archaeological interest.

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Scottish Ministers are satisfied that the Company has done what it reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or any such flora, fauna, features, sites, buildings or objects.

Duration of planning permission

Section 58(1) of the Town and Country Planning (Scotland) Act 1997 provides that planning permission lapses if development has not begun within a period of 3 years. Section 58(2) of that Act enables Ministers to direct that a longer period is allowed before planning permission lapses. Scottish Government policy is that due to the constraints, scale and complexity of constructing such developments, and the variables around wind farm connections feeding into the line, a 5 year time scale for the commencement of development is appropriate.

The Scottish Ministers' Considerations

Chapter 2 of the Inquiry Report deals with landscape and visual impact (including recreation and residential amenity), chapter 3 with cultural heritage, chapter 4 with noise, chapter 5 with hydrology and private water supplies and chapter 6 with other issues. In each chapter the Reporters summarised the cases for each party, taking account of the precognitions, hearing statements, the discussion at the inquiry and hearing sessions and the closing submissions. They also took into account the environmental information in the Environmental Assessment, the Supplementary Environmental Information, the written representations and all of the other information supplied for the inquiry and hearing sessions. The Reporters' conclusions and overall conclusions follow the summaries of the parties' cases. Their overall conclusions and recommendations can be found in chapter 9 of the Report. The Reporters recommend that section 36 consent should be granted for the proposed wind farm at Cloich Forest, and that a direction deeming planning permission to be granted should be given.

Ministers note that the two reporters who dealt with the Cloich Forest inquiry were also appointed to consider the planning permission appeal for neighbouring Hag Law wind farm. This was recalled by Scottish Ministers in a direction dated 27 May 2015 to enable Ministers to consider it alongside the Cloich Forest application. The reason for the direction was due to both sites being within close proximity and this allowed Ministers to consider the potential cumulative impact. Hag Law site is south-east of the A701 near Romano Bridge in the Cloich Hills in the Scottish Borders. The 8 turbine Hag Law scheme is being developed by Stevenson Hill Wind Energy Ltd. Having also considered Hag Law wind farm proposal the Reporters concluded the proposals are not compatible and therefore should not both be built. A comparison between Cloich Forest and Hag Law gives the balance of advantage to Cloich Forest.

Scottish Ministers agree with the Reporters' reasoning and conclusions, adopt them for the purposes of their own decision and accept their recommendation.

The Scottish Ministers' Determination

Subject to the conditions set out in **Part 1 of Annex 2**, Scottish Ministers **grant consent** under section 36 of the Electricity Act 1989 for the construction and operation of the Cloich

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Forest Wind Powered electricity generating station in Scottish Borders Council area (as described in **Annex 1**).

Subject to the conditions set out in **Part 2 of Annex 2**, Scottish Ministers direct that **planning permission is deemed to be granted** under section 57(2) of the Town and Country Planning (Scotland) Act 1997 in respect of the development described in Annex 1.

The Scottish Ministers direct that section 58(1) of the Town and Country Planning (Scotland) Act 1997 is not to apply with regard to that planning permission and that planning permission is to lapse on the expiry of a period of 5 years from the date of this direction if there has not been commencement of development within that period.

In accordance with the EIA Regulations, the Company must publicise this determination for two successive weeks in the Edinburgh Gazette and one or more newspapers circulating in the locality in which the land to which the Application relates is situated.

Copies of this letter and the consent have been sent to the Planning Authority. This letter has also been published on the Scottish Government Energy Consents website.

The Scottish Ministers' decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review. Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine applications for consent. The rules relating to the judicial review process can be found on the website of the Scottish Courts

<https://www.scotcourts.gov.uk/docs/default-source/rules-and-practice/rules-of-court/court-of-session/chap58.pdf?sfvrsn=12>

Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

Yours faithfully

FRANCES PACITTI

Head of Energy Consents

A member of the staff of the Scottish Ministers

ANNEX 1

Description of the Development

The Cloich Forest wind farm with a generating capacity which exceeds 50 MW, comprising a 18 turbine wind-powered electricity generating station, located on land approximately 5km north-west of Peebles in the Scottish Borders Council planning area, as described in the Application and Environmental Statement (submitted on 8 October 2012) and Supplementary Environmental Information (submitted on 31 January 2014). This is subject to the conditions in Annex 2.

The principal components and ancillary development of the wind farm comprise:

- 18 wind turbines with a maximum tip height of 115 metres;
- concrete turbine foundations and associated crane pads at each turbine location;
- permanent lattice steel anemometer mast (70m);
- upgraded vehicular and pedestrian access;
- new onsite access tracks;
- upgraded onsite access tracks;
- two onsite borrow pits;
- temporary works (construction compound, site access and security compound and temporary laydown area);
- control Building, substation and underground cabling;
- wind turbine transformer high voltage kiosks; and
- modifications to the entrance to and from the D18 road which leads to Cloich Forest from the A703

ANNEX 2

Conditions attached to section 36 Consent

1. Duration of the Consent

The consent is for a period of 25 years from the date of Final Commissioning. Written confirmation of the date of First Commissioning shall be provided to the Planning Authority and Scottish Ministers no later than one calendar month after that date.

Reason: to define the duration of the consent.

2. Commencement of development

The commencement of development shall be no later than five years from the date of this consent, or in substitution such other period as the Scottish Ministers may hereafter direct in writing. Written confirmation of the intended date of commencement of development shall be provided to the Planning Authority and Scottish Ministers no later than one calendar month before that date.

Reason: To avoid uncertainty and ensure that the consent is implemented within a reasonable period.

3. Non-assignment

The Company shall not be permitted to assign this consent without the prior written authorisation of the Scottish Ministers. The Scottish Ministers may authorise the assignment of the consent (with or without conditions) or refuse assignment as they may, in their own discretion, see fit. The consent shall not be capable of being assigned, alienated or transferred otherwise than in accordance with the foregoing procedure. The Company shall notify the Scottish Ministers and Planning Authority in writing of the name of the assignee, principal named contact and contact details within 14 days of written confirmation from the Scottish Ministers of consent to an assignment having been granted.

Reason: To safeguard the obligations of the consent if transferred to another company.

4. Serious Incident Reporting

In the event of any breach of health and safety or environmental obligations relating to the Development during the period of this consent, written notification of the nature and timing of the incident must be given to the Scottish Ministers, including confirmation of remedial measures taken and/ or to be taken to rectify the breach, within 24 hours of such an incident occurring.

Reason: to keep the Scottish Ministers informed of any such incidents which may be in the public interest.

Conditions attached to Deemed Planning permission

5. Implementation in accordance with approved plans and requirements of this consent

Except as otherwise required by the terms of this consent and deemed planning permission, the Development shall be undertaken in accordance with the Application including the approved drawings listed at **Note 1** at the end of the conditions (as supplemented or amended by any further or additional environmental information) and other documentation lodged in support of the application.

Reason: to ensure that the Development is carried out in accordance with the approved details.

6. Design and operation of turbines

(1) Development shall not commence until full details of the proposed wind turbines (including, but not limited to, the power rating and sound power levels, the size, type, external finish and colour (which should be non-reflective pale grey semi-matt), any anemometry masts and all associated apparatus have been submitted to and approved in writing by the Planning Authority .

(2) The wind turbines shall be consistent with the candidate turbine or range assessed in the Environmental Statement, and the tip height thereof shall not exceed 115 metres above ground level.

(3) The wind turbines shall be constructed and operated in accordance with the approved details and maintained in the approved colour, free from external rust, staining or discolouration, until the wind farm is decommissioned.

(4) All wind turbine blades shall rotate in the same direction.

(5) None of the wind turbines, anemometers, power performance masts, switching stations or transformer buildings/enclosures, ancillary buildings or above ground fixed plant shall display any name, logo, sign or other signage (other than health and safety signage) unless otherwise approved in advance in writing by the Planning Authority.

Reason: to ensure that the environmental impacts of the turbines forming part of the Development conform to the impacts of the candidate turbine assessed in the environmental statement and in the interests of the visual amenity of the area.

7. Design of sub-station and ancillary development

(1) Development shall not commence until final details of the external appearance, dimensions, and surface materials of the substation building, associated compounds, any construction compound boundary fencing, external lighting and parking areas have been submitted to and approved in writing by the Planning Authority.

(2) The substation building, associated compounds, fencing, external lighting and parking areas shall be constructed in accordance with the approved details.

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Reason: to ensure that the environmental impacts of the sub-station and ancillary development forming part of the Development conform to the impacts assessed in the environmental statement and in the interests of the visual amenity of the area.

8. Micro-siting

(1) Subject to paragraph (2), all wind turbines, buildings, masts, areas of hard-standing and tracks shall be constructed in the location shown on Figure 4.1 of the Supplementary Environmental Information submitted on 31 January 2014 (appendix 1 of this letter).

(2) Wind turbines, buildings, masts, areas of hard-standing and tracks may be adjusted by micro-siting within the site, but micrositing is subject to the following restrictions, unless otherwise approved in advance in writing by the Planning Authority (in consultation with SEPA and SNH)—

- (a) no wind turbine foundation shall be positioned higher, when measured in metres Above Ordinance Datum (Newlyn), than the position shown on Figure 4.1;
- (b) no building, mast, access track or hard-standing shall be moved more than 50 metres from the position shown on the original approved plans;
- (c) no wind turbine shall be moved more than 50 metres from the position shown on the original approved plans and turbines T5, T6, T7, T15 and T16 shall not be moved closer than the location specified in figure 4.1 of the Supplementary Environmental Information submitted on 31 January 2014 to any of the dwellings at Upper Stewarton, the Stewarton group (Nether Stewarton Farmhouse, Stewarton House, Stewarton Toll, Stewarton Lodge) and the Harehope group (Harehope Cottage, Harehope Steading, Old Harehope, Harehope Farmhouse);
- (d) all micro-siting permissible under this condition must be approved in advance in writing by the Ecological Clerk of Works.

(2) No later than one month after the date of First Commissioning, an updated site plan must be submitted to the Planning Authority showing the final position of all wind turbines, masts, areas of hard-standing, tracks and associated infrastructure forming part of the Development. The plan should also specify areas where micro-siting has taken place and, for each instance, be accompanied by copies of the Ecological Clerk of Works or Planning Authority's approval, as applicable.

Reason: to control environmental impacts while taking account of local ground conditions, and specifically to limit changes to positioning of turbines where they are closest to residential property and where their relocation would have the potential to change the level of impact on residential amenity and hydrology to that hereby consented.

9. Borrow Pits

(1) Development shall not commence until a scheme for the working of each borrow pit has been submitted to and approved in writing by the Planning Authority in consultation with SEPA. The scheme shall include:

- (a) a detailed working method statement;
- (b) details of the handling of any overburden (including peat, soil and rock);
- (c) drainage measures, including measures to prevent surround areas of peatland from drying out;
- (d) a programme of implementation of the works described in the scheme; and
- (d) details of the reinstatement, restoration and aftercare of the borrow pits at the end of the construction period.

(2) The approved scheme shall be implemented in full.

Reason: to ensure that excavation of materials from the borrow pits is carried out in a manner that minimises the impact on road safety, amenity and the environment. To secure the restoration of borrow pits at the end of the construction period.

10. Planning Monitoring Officer

(1) Development shall not commence until the Planning Authority has approved the terms of appointment by the Company of an independent and suitably qualified environmental consultant to monitor compliance with the conditions attached to this deemed planning permission.

(2) The consultant must be appointed on the approved terms during the period from commencement of development to the date of Final Commissioning and thereafter throughout the period of operation of the wind farm.

Reason: to enable the Development to be suitably monitored during the construction phase to ensure compliance with the consent issued.

11. Ecological Clerk of Works

(1) Development shall not commence until the Planning Authority has, in consultation with SNH and SEPA, approved in writing the terms of appointment of an independent Ecological Clerk of Works. The terms of appointment shall:

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- (a) impose a duty to monitor compliance with the ecological and hydrological measures provided for in the Environmental Statement and other information lodged in support of the Application, and other plans approved in terms of the Construction Method Statement and Habitat Management and Enhancement Plan (conditions 12 and 15); and
 - (b) require the Ecological Clerk of Works to report at the earliest practical opportunity to the nominated construction project manager any incidences of non-compliance with the works which the Ecological Clerk of Works is responsible for monitoring.
- (2) The Ecological Clerk of Works shall be appointed on the approved terms from commencement of development, throughout any period of construction activity and during any period of post construction restoration works approved in terms of condition 12.
- (3) No later than 18 months prior to decommissioning of the Development or the expiration of the section 36 consent (whichever is the earlier), details of the terms of appointment of an independent Ecological Clerk of Works throughout the decommissioning, restoration and aftercare phases of the Development must be submitted to the Planning Authority for approval in consultation with SNH and SEPA. The Ecological Clerk of Works shall be appointed on the approved terms throughout the decommissioning, restoration and aftercare phases of the Development.

Reason: to secure effective monitoring compliance with the environmental mitigation and management measures associated with the Development during the decommissioning, restoration and aftercare phases.

12. Construction Method Statement

- (1) Development shall not commence until a Construction Method Statement outlining site specific details of all on-site construction works, post-construction reinstatement, drainage and mitigation, together with details of their timetabling, has been submitted to and approved in writing by the Planning Authority in consultation with SNH and SEPA.
- (2) The Construction Method Statement shall include:
- (a) a Construction and Environmental Management Plan outlining the procedures, mechanisms and responsibilities for implementing the environmental measures outlined in the Construction Method Statement and the separate management plans listed below;
 - (b) a site waste management plan (dealing with all aspects of waste produced during the construction period other than peat), including details of contingency planning in the event of accidental release of materials which could cause harm to the environment;
 - (c) details of the formation of the construction compound, welfare facilities, any areas of hard-standing, turning areas, internal access tracks, car parking, material stockpiles, oil storage, lighting columns, and any construction compound boundary fencing;
 - (d) details of borrow pit excavation and restoration;

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- (e) a dust management plan;
- (f) details of measures to be taken to prevent loose or deleterious material being deposited on the local road network, including wheel cleaning and lorry sheeting facilities, and measures to clean the site entrances and the adjacent local road network;
- (g) a pollution prevention and control method statement, including arrangements for the storage of oil and fuel on the site;
- (h) details of soil storage and management;
- (i) a peat management plan;
- (j) a drainage management strategy, demonstrating how all surface and waste water arising during and after development will be managed and prevented from polluting any watercourses or sources;
- (k) details of sewage disposal and treatment;
- (l) details of temporary site illumination;
- (m) details of the construction of the access into the site and the creation and maintenance of associated visibility splays;
- (n) the method of construction of the crane pads;
- (o) the method of construction of the turbine foundations;
- (p) the method of working cable trenches;
- (q) the method of construction and erection of the wind turbines and meteorological masts;
- (r) details of watercourse crossings;
- (s) post-construction restoration/reinstatement of the working areas not required during the operation of the development, including construction access tracks, borrow pits, construction compound and other construction areas. Wherever possible, reinstatement is to be achieved by the careful use of turfs removed prior to construction works. Details should include all seed mixes to be used for the reinstatement of vegetation;
- (t) a wetland ecosystems survey and mitigation plan, where appropriate; and
- (u) a felling and forestry wastes management plan, where appropriate;
- (v) a strategy for monitoring, control and mitigation in respect of construction noise, and a methodology to be applied in instances where complaints are received in relation to construction noise.

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(2) The Construction Method Statement shall be implemented in full unless otherwise approved in writing by the Planning Authority in consultation with SNH and SEPA.

Reason: to ensure that all construction operations are carried out in a manner that minimises their impact on road safety, amenity and the environment, and that the mitigation measures are fully implemented.

13. Construction hours

(1) Construction work which is audible from any noise sensitive receptor shall only take place on the site between the hours of 07.00 to 19.00 on Monday to Friday inclusive and 07.00 to 13.00 on Saturday, with no construction work taking place on a Sunday or on a national public holiday, unless otherwise agreed in advance with the Planning Authority.

(2) Outwith those hours, development on the site shall be limited to turbine erection, maintenance, emergency works, dust suppression, and the testing of plant and equipment, unless otherwise approved in advance in writing by the Planning Authority.

(3) HGV movements to and from the site (excluding abnormal loads) during construction shall be limited to 07.00 to 19.00 on Monday to Friday, and 07.00 to 13.00 on Saturday, with no HGV movements to or from the site taking place on a Sunday or on a national public holiday.

(4) The relevant national public holidays are as follows:

- New Year's Day (or substitute day if New Year's Day falls on a weekend day)
- New Year Holiday (day immediately following New Year's Day or substitute day if the New Year Holiday falls on a weekend day)
- Good Friday
- Early May Bank Holiday (1st Monday in May)
- Spring Bank Holiday (last Monday in May)
- Summer Holiday (1st Monday in August)
- St Andrew's Day (30th November or substitute day if 30th falls on a weekend day)
- Christmas Day (or substitute day if Christmas Day falls on a weekend day)
- Boxing Day (or substitute day if Boxing Day falls on a weekend day)

Reason: in the interests of local amenity.

14. Traffic Management Plan

(1) Development shall not commence until a traffic management plan has been submitted to and approved in writing by the Planning Authority. The traffic management plan shall include:

- (a) the routing of all traffic associated with the Development on the local road network;
- (b) measures to ensure that the specified routes are adhered to, including monitoring procedures;

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- (c) details of all signage and lining arrangements to be put in place;
 - (d) provisions for emergency vehicle access;
 - (e) identification of a nominated person to whom any road safety issues can be referred;
 - (f) a plan for access by vehicles carrying abnormal loads, including the number and timing of deliveries, the length, width, axle configuration of all extraordinary traffic accessing the site;
 - (g) swept path analysis for the abnormal loads, taking into consideration the size of the consented turbines;
 - (h) details of road and junction widenings (technical specifications to correspond with the advice of the council's Roads Planning Manager);
 - (i) management of road drainage during construction and development;
 - (j) a scheme of works for management of the junction areas between construction and decommissioning phases;
 - (k) a written statement relating to the undertaking of road condition surveys and remedial works to respond to damage/deterioration caused by construction traffic.
- (2) The approved traffic management plan shall be implemented in full, unless otherwise agreed in advance in writing with the Planning Authority .

Reason: in the interests of road safety and to ensure that abnormal loads access the site in a safe manner.

15. Habitat Management and Enhancement Plan

(1) Development shall not commence until a Habitat Management and Enhancement Plan has been submitted to and approved in writing by the Planning Authority in consultation with RSPB Scotland, Forestry Commission Scotland and SEPA. The Habitat Management and Enhancement Plan shall set out proposed long term habitat management and enhancement of the site during the period of construction, operation, decommissioning, restoration and aftercare of the site and shall provide for the maintenance, monitoring and reporting of habitat on site in relation to bats, schedule 1 raptors, breeding birds, reptiles, amphibia, woodland, wetland, grassland and heathland management.

(2) The approved Habitat Management and Enhancement Plan shall be updated to reflect ground condition surveys undertaken following construction and prior to the date of Final Commissioning and submitted to the Planning Authority for written approval in consultation with RSPB Scotland, Forestry Commission Scotland and SEPA.

(3) Unless otherwise agreed in advance in writing with the Planning Authority, the approved Habitat Management and Enhancement Plan shall be implemented in full.

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Reason: in the interests of good land management and the protection and enhancement of habitats.

16. Biodiversity Monitoring and Management

(1) Development shall not commence until the following plans, programmes and/or survey results shall have been submitted to, and approved by the Planning Authority :

(a) a programme of monitoring of Schedule 1 raptor species and protected mammals including bats and badgers, agreed with the Planning Authority and in consultation with SNH and RSPB Scotland;

(b) supplementary surveys for protected species (including otter, bat, badger, red squirrel, breeding birds), carried out by a suitably qualified person or persons in a manner appropriate to the phasing of the development, to inform a Species Mitigation and Management Plan;

(c) a Species Mitigation and Management Plan relating to the species identified in paragraph (b);

(d) an Integrated Water Quality and Fisheries Management Plan agreed with Marine Scotland-Freshwater Laboratory and River Tweed Commissioners (at least 12 months before construction starts), with a programme of pre-construction water quality and fisheries surveys to establish a baseline, plus during and after construction water quality monitoring (in addition to visual checks required under the Construction and Environmental Monitoring Plan).

(2) With regard to paragraph (1)(a), the monitoring programme shall be undertaken pre-construction, during construction, and for years 1, 2, 3, 5, 10 and 15 once the wind farm becomes operational.

(3) With regard to paragraph (1)(b), the results of these surveys shall be used to inform construction activities and any required mitigation proposals for protected species on the site, and shall be strictly adhered to in the course of development.

(4) With regard to paragraphs (1)(c) and (d), all on-site works and development shall be carried out in accordance with the approved plans.

Reason: to ensure that reasonable protection is given to biodiversity on and utilising the site; species protected by law are not harmed as a result of the development taking place; the protected species are afforded due protection (and to enable greater understanding of the impacts of development of this nature); and proposed mitigation measures are effective in protecting fisheries within and downstream of the proposed Development.

17. Archaeological Clerk of Works

(1) Development shall not commence until the Planning Authority, in consultation with Historic Environment Scotland, has approved the terms of appointment of an

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independent Archaeological Clerk of Works, and the implementation of a written scheme of investigation outlining a programme of archaeological mitigation has been secured. The scope of the Archaeological Clerk of Works's appointment shall include:

(a) monitoring implementation and compliance with a programme of archaeological mitigation works approved by the Planning Authority in a written scheme of investigation which shall include:

(i) an archaeological watching brief on relevant excavations where unknown archaeological deposits or features may exist;

(ii) a paleo-environmental sampling and dissemination strategy in areas where deep peat will be impacted by development;

(iii) a post-excavation research and dissemination strategy in the event of significant discoveries determined as such by the Archaeological Clerk of Works and Planning Authority. All post-excavation research and dissemination shall be completed within 3 years of the completion of on-site investigations;

(iv) provision regarding the erection of suitable fencing around known archaeological assets, to be determined by the Archaeological Clerk of Works and Planning Authority, where there is potential damage during development;

(v) a strategy of LiDAR survey of the impacted historic landscape to be agreed with the Planning Authority and to include community engagement, interpretation and dissemination;

(b) advising on adequate protection of archaeological interests on the site;

(c) checking for new records of archaeological interests for which additional mitigation may be required;

(d) directing the micro-siting and placement of turbines and tracks away from known assets and discovered assets of archaeological significance where in situ preservation is warranted;

(e) monitoring the compliance with mitigation, reinstatement and restoration measures approved in this consent; and

(f) reporting any breaches of the mitigation, reinstatement and restoration measures approved under this condition to the Planning Authority in writing.

(2) The Archaeological Clerk of Works shall be appointed on the approved terms from commencement of development, throughout any period of construction activity and during any period of post construction restoration works approved in terms of condition 12.

(3) No later than 18 months prior to Decommissioning of the Development or the expiration of the section 36 consent (whichever is the earlier details of the terms of appointment of an independent Archaeological Clerk of Works throughout the

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decommissioning, restoration and aftercare phases of the Development shall be submitted to the Planning Authority for approval, in consultation with Historic Environment Scotland. The Archaeological Clerk of Works shall be appointed on the approved terms throughout the decommissioning, restoration and aftercare phases of the Development.

Reason: to ensure the protection or recording of archaeological features impacted by development.

18. Replanting of Forestry

(1) Development shall not commence until a woodland planting scheme to compensate for the removal of 15.2 hectares of existing woodland ("the Replanting Scheme") has been submitted for the written approval of the Planning Authority in consultation with the Forestry Commission Scotland Conservator.

(2) The Replanting Scheme must comply with the requirements set out in the UK Forestry Standard (Forestry Commission, 2011. ISBN 978-0-85538-830-0) and the guidelines to which it refers, or such replacement standard as may be in place at the time of submission of the Replanting Scheme for approval. The Replanting Scheme must include:

- (a) details of the location of the area to be planted;
- (b) details of land owners and occupiers of the land to be planted;
- (c) the nature, design and specification of the proposed woodland to be planted;
- (d) details of all consents required for delivery of the Replanting Scheme and timescales within which each will be obtained;
- (e) the phasing and associated timescales for implementing the Replanting Scheme;
- (f) proposals for the maintenance and establishment of the Replanting Scheme, including annual checks, replacement planting, fencing, ground preparation and drainage; and
- (g) proposals for reporting to the Planning Authority on compliance with timescales for obtaining the necessary consents and thereafter implementation of the Replanting Scheme.

(2) Unless otherwise agreed in writing by the Planning Authority, the Development shall not be commissioned to supply electricity on a commercial basis unless all relevant consents necessary for implementation of the approved Replanting Scheme in accordance with the phasing and timescales set out therein have been obtained.

(3) In the event that there is no reasonable prospect of the relevant consents necessary for implementation of the approved Replanting Scheme being obtained, an amended Replanting Scheme must be submitted for the approval of the Planning Authority in consultation with Forestry Commission Scotland. Unless otherwise

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agreed in writing by the Planning Authority , the Development shall not be commissioned to supply electricity on a commercial basis until all relevant consents necessary for implementation of the approved amended Replanting Scheme in accordance with the phasing and timescales it contains have been obtained.

(4) The approved Replanting Scheme (or, as the case may be, an approved amended Replanting Scheme) shall be implemented in full, unless otherwise agreed in writing by the Planning Authority after consultation with the Forestry Commission Scotland Conservator.

Reason: to secure replanting to mitigate against effects of deforestation arising from the Development.

19. Noise

(1) The rating level of noise immissions from the combined effects of the wind turbines forming part of the Development (including the Application of any tonal penalty) shall not exceed the values for the relevant integer wind speed set out in, or derived from, the tables attached to this condition at any dwelling which is lawfully existing or has planning permission at the date of the section 36 consent.

(2) The wind turbines shall be designed to permit individually controlled operation or shut down at specified wind speeds and directions in order to facilitate compliance with noise criteria.

(3) Power production, wind speed and wind direction must be continuously logged. These data shall be retained for a period of not less than 24 months and shall be provided to the Planning Authority within 14 days of receipt in writing of a request to do so.

(4) Development shall not commence until the Planning Authority has a list of proposed independent consultants who may undertake compliance measurements in accordance with this condition has been submitted to and approved by the Planning Authority. Amendments to the list of approved consultants shall be made only with the prior written approval of the Planning Authority.

(5) Within 21 days from receipt of a written request from the Planning Authority following a complaint to it from an occupant of a dwelling alleging noise disturbance at that dwelling, a consultant on the list approved by the Planning Authority by virtue of paragraph (4) must be employed to assess the level of noise immissions from the wind farm at the complainant's property. The written request from the Planning Authority shall set out at least the date, time and location to which the complaint relates and any identified atmospheric conditions, including wind direction, and include a statement as to whether, in the opinion of the Planning Authority , the noise giving rise to the complaint contains or is likely to contain a tonal component.

(6) The assessment of the rating level of noise immissions shall be undertaken in accordance with an assessment protocol which has been approved in writing by the Planning Authority . The protocol shall include the proposed measurement location(s) where measurements for compliance checking purposes shall be undertaken, whether

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noise giving rise to the complaint contains or is likely to contain a tonal component, and also the range of meteorological and operational conditions (which shall include the range of wind speeds, wind directions, power generation and times of day) to assess the rating level of noise immissions. The proposed range of conditions shall be those which prevailed during times when the complainant alleges there was disturbance due to noise (as described in the Planning Authority's request to assess noise) Planning Authority and such others as the independent consultant considers likely to result in a breach of the noise limits.

(7) Where the dwelling to which a complaint is related is not listed in the tables attached to this condition, Planning Authority noise limits selected from the tables attached to this condition which are to apply at the dwelling for compliance checking purposes shall be submitted for the written approval of the Planning Authority. The proposed noise limits are to be those limits selected from the tables specified for a listed location which the independent consultant considers as being likely to experience the most similar background noise environment to that experienced at the dwelling. The rating level of noise immissions resulting from the combined effects of the wind turbines shall not exceed the noise limits approved in writing by the Planning Authority for the dwelling

(8) The independent consultant's assessment of the rating level of noise immissions shall be provided to the Planning Authority within 2 months of the date of the written request of the Planning Authority referred to in paragraph (5), Planning Authority unless the time limit is extended in writing by the Planning Authority. Certificates of calibration of the instrumentation used to undertake the measurements shall be submitted to the Planning Authority with the independent consultant's assessment of the rating level of noise immissions.

(9) Where a further assessment of the rating level of noise immissions from the wind farm is required, a copy of the further assessment must be submitted to the Planning Authority within 21 days of submission to them of the independent consultant's under paragraph (8) unless the time limit has been extended in writing by the Planning Authority .

Table 1 – Between 07:00 and 23:00 – Noise limits expressed in dB LA90,10 minute as a function of the standardised wind speed (m/s) at 10 metre height as determined within the site averaged over 10 minute periods

Location including co-ordinates	Standardised wind speed at 10 metre height (m/s) within the site averaged over 10 minute periods											
	1	2	3	4	5	6	7	8	9	10	11	12
Nether Stewarton Properties*	37	37	37	37	37	37	37	37	38	40	41	42
Ruddenleys Properties**	35	35	35	35	35	35	35	36	39	41	43	44

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Cloich Farm	35	35	35	35	35	35	35	35	36	38	41	44	48
Harehope Properties***	35	35	35	35	35	35	35	35	39	42	45	47	49
Upper Stewarton	39	39	39	39	39	39	39	39	39	39	40	41	42

Table 2 – Between 23:00 and 07:00 – Noise limits expressed in dB LA90,10-minute as a function of the standardised wind speed (m/s) at 10 metre height as determined within the site averaged over 10 minute periods.

Location including co-ordinates	Standardised wind speed at 10 metre height (m/s) within the site averaged over 10 minute periods												
	1	2	3	4	5	6	7	8	9	10	11	12	
Nether Stewarton Properties*	43	43	43	43	43	43	43	43	43	43	43	43	45
Ruddenleys Properties**	43	43	43	43	43	43	43	43	43	43	43	43	43
Cloich Farm	43	43	43	43	43	43	43	43	43	43	43	43	43
Harehope Properties***	43	43	43	43	43	43	43	43	43	43	43	46	49
Upper Stewarton	43	43	43	43	43	43	43	43	43	43	43	43	45

*Nether Stewarton Farm, Stewarton House, Stewarton Lodge, Stewarton Toll

** White Heather Cottage Ruddenleys, The Carriage House Ruddenleys, Ruddenleys Cottage, Ruddenleys House

***Harehope Cottage, The Steading Harehope, Old Harehope, Harehope Farmhouse

Reason: to protect nearby residents from undue noise and disturbance; to ensure that noise limits are not exceeded; and to enable prompt investigation of complaints.

20. Private Water Supplies

(1) Development shall not commence until a method statement has been submitted to and approved in writing by the Planning Authority, detailing all mitigation measures to be delivered to secure the quality, quantity and continuity of water supplies to properties which are served by private water supplies at the date of the section 36 consent and which may be affected by the Development. In particular, the method statement shall

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include a Groundwater Monitor Plan for the private water supplies serving The Observatory and possibly also Glen View, depending on further investigatory work to be undertaken.

(2) The approved method statement shall accord with SEPA guidance note 31 and shall be implemented in full.

Reason: to maintain a secure and adequate quality water supply to all properties with private water supplies which may be affected by the Development.

21. Water and Flood Risk Management

(1) Development shall not commence until the following have been submitted to and approved in writing by the Planning Authority :

- (a) design details of new crossings or alterations to previous crossings to ensure that there is no decrease in flow conveyance and subsequently increased flood risk caused by the crossings;
- (b) details of regular maintenance relating to new water crossings and drains, to mitigate by reducing surface water runoff impact;
- (c) details of levels of discharges from SUDS or other drainage, confirming how it will be kept to existing Greenfield run-off rates;
- (d) a written explanation of how it is proposed to manage the minimisation of sediment entering the surrounding water courses.

Reason: to minimise impact on the water environment and to ensure that flood risk is ameliorated.

22. Redundant turbines

(1) If one or more turbine fails to generate electricity for a continuous period of 12 months unless otherwise agreed in writing by the Planning Authority, on expiry of that period a scheme shall be submitted to the Planning Authority setting out how the turbine or turbines and associated infrastructure will be removed from the site and the ground restored.

(2) The approved scheme shall be implemented within six months of the date of its approval, all to the satisfaction of the Planning Authority .

Reason: To ensure that any redundant wind turbine is removed from Site, in the interests of safety, amenity and environmental protection

23. Aviation Safety

Development shall not commence until the Planning Authority, Ministry of Defence, Defence Geographic Centre and National Air Traffic Services have been provided with

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the following information, and the Planning Authority has been provided with evidence Planning Authority of that having been done:

- (a) the date of the expected commencement of each stage of construction;
- (b) the height above ground level of the tallest structure forming part of the Development;
- (c) the maximum extension height of any construction equipment; and
- (d) the position of the turbines and masts in latitude and longitude.

Reason: in the interests of aviation safety.

24. Aviation Lighting

(1) No turbines shall be erected until a scheme for aviation lighting for the wind farm submitted to, and approved in writing by, the Planning Authority. The scheme shall include details of infra-red aviation lighting to be applied. No lighting other than that described in the scheme may be applied at the site, other than as required for health and safety purposes, unless otherwise agreed in advance and in writing by the Planning Authority.

(2) The Development shall be operated in accordance with the approved scheme.

Reason: in the interests of aviation safety.

25. Site Decommissioning, Restoration and Aftercare

(1) The Development will be decommissioned no later than the date falling 25 years from the date of Final Commissioning. The total period for restoration of the site in accordance with this condition shall not exceed 3 years from the date of Final Decommissioning without the prior written approval of the Scottish Ministers in consultation with the Planning Authority.

(2) Development shall not commence until a decommissioning, restoration and aftercare strategy has been submitted to and approved in writing by the Planning Authority in consultation with SNH and SEPA. The scheme shall detail measures for the decommissioning of the Development, restoration and aftercare of the site and shall include proposals for the removal of the above ground elements of the Development, the treatment of ground surfaces, the management and timing of the works, and environmental management provisions.

(3) No later than 3 years prior to Decommissioning of the Development or the expiration of the section 36 consent (whichever is the earlier) a detailed decommissioning, restoration and aftercare plan, based upon the principles of the approved decommissioning, restoration and aftercare method statement, shall be submitted for the written approval of the Planning Authority in consultation with SNH and SEPA. The detailed decommissioning, restoration and aftercare plan will provide updated and detailed proposals for the removal of above ground elements of the Development, the

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treatment of ground surfaces, the management and timing of the works and environment management provisions which shall include:

- (a) a site waste management plan (dealing with all aspects of waste produced during the decommissioning, restoration and aftercare phases);
- (b) details of the formation of the construction compound, welfare facilities, any areas of hard-standing, turning areas, internal access tracks, car parking, material stockpiles, oil storage, lighting columns, and any construction compound boundary fencing;
- (c) a dust management plan;
- (d) details of measures to be taken to prevent loose or deleterious material being deposited on the local road network including wheel cleaning and lorry sheeting facilities, and measures to clean the site entrances and the adjacent local road network;
- (e) a pollution prevention and control method statement, including arrangements for the storage of oil and fuel on the site;
- (f) soil storage and management;
- (g) sewage disposal and treatment;
- (h) temporary site illumination;
- (i) the construction of any temporary access into the site and the creation and maintenance of associated visibility splays;
- (j) details of watercourse crossings;
- (k) a species protection plan based on surveys for protected species (including birds) carried out no longer than 18 months prior to submission of the plan.

(3) The Development shall be decommissioned, site restored and aftercare undertaken in accordance with the approved plan, unless otherwise agreed in writing in advance with the Planning Authority in consultation with SNH and SEPA.

Reason: to ensure the decommissioning and removal of the Development in an appropriate and environmentally acceptable manner and the restoration and aftercare of the site, in the interests of safety, amenity and environmental protection.

26. Financial Guarantee

(1) Development shall not commence until a bond or other form of financial guarantee in favour of the Planning Authority and in terms acceptable to the Planning Authority, has been provided to the Planning Authority. The bond or other form of financial guarantee shall secure the cost of performance of all decommissioning, restoration and aftercare obligations contained in **condition 25**. Planning Authority The bond or other form of financial guarantee shall be maintained in favour of the Planning Authority until the date of completion of all restoration and aftercare obligations.

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(2) The value of the bond or other form of financial guarantee shall be determined by a suitably qualified independent professional as being sufficient to meet the costs of all decommissioning, restoration and aftercare obligations referred to in condition 25. The value of the financial guarantee shall be reviewed by a suitably qualified independent professional no less than every 5 years and increased or decreased to take account of any variation in costs of compliance with restoration and aftercare obligations and best practice prevailing at the time of each review.

Reason: to ensure that there are sufficient funds to secure performance of the decommissioning, restoration and aftercare conditions attached to this deemed planning permission in the event of default by the Company.

27. Public Path and Access Protection, Enhancement and Management

Development shall not commence until a Public Path and Access Management Plan has been submitted to and approved in writing by the Planning Authority, in consultation with the Forestry Commission Scotland Ranger. The plan shall include:

- (a) timings of any intended diversion, closure or obstruction of any public right of way;
- (b) measures for ensuring that paths kept open during development are safe and can be traversed without undue harm to the amenity of users;
- (c) measures to ensure that users of the path network and accessible areas more generally are able to navigate through and adjacent to the site, including mapping and signage;
- (d) any temporary installations such as gates, stiles and bridges and the duration of their installation;
- (e) proposals to restore original paths to an acceptable condition between construction and decommissioning and once full decommissioning has taken place; and
- (f) proposals to enhance public access within and adjacent to the site during the lifetime of the Development.

Reason: the Development would interact with a range of public paths and accessible areas, with development effects causing changes that require careful management to ensure that the experience of users is not harmed unacceptably or, where it will be harmed, that the level and nature of harm is limited and controlled to minimise development effects.

Note 1: Approved Drawings

- Figure 4.1 (Volume 2a 2014) 'Site Layout'
- Figure 4.2 (Volume 2a 2014) 'Site Layout and Felling Coupes'
- Figure 4.3 (Volume 2a 2014) 'Typical Wind Turbine Structure'
- Figure 4.4 (Volume 2a 2014) 'Typical Lattice Anemometry Mast'
- Figure 14.1 (Volume 2a 2014) 'Proposed Improved Pedestrian Access'

Definitions

In this consent and deemed planning permission:

“the Application” means the Application and Environmental Statement submitted by the Company on 8 October 2012, and the Supplementary Environmental Information including revised drawings and assessment submitted on 31 January 2014.

“Archaeological Clerk of Works” means an independent person or persons employed for the purpose of overseeing and managing archaeological matters on the site prior to construction (i.e. at the point where ground may be broken which does not constitute development but which does constitute works required to enable development) and during development.

“associated apparatus” means the fencing, temporary machinery, meteorological mast, transformer kiosks, temporary buildings and compounds required to facilitate or as part of the Development.

“associated infrastructure” means the upgraded and new tracks and hardstandings, turbine foundations and on-site cabling (including trenches and/or support poles) enabling connection to the electricity grid.

“background noise level” means the ambient noise level already present within the environment (in the absence of noise generated by the Development) as measured and correlated with wind speeds.

“borrow pit” means an area of ground utilised for the extraction of rock to be used as part of the construction of the wind farm Planning Authority ;

“candidate turbine” means the turbine nominated for use to inform the Environmental Impact Assessment, as identified in the Supplementary Environmental Information received on 31 January 2014 and in Figure 4.3 of Volume 2a to the Environmental Statement, and as referred to in the noise Chapter 12 of Volume 1 as the Vestas V90 3MW turbine.

“commencement of development” means the date on which development shall be taken as begun in accordance with section 27 of the Town and Country Planning (Scotland) Act 1997. It does not include such activities or works as may be agreed in excluded, including works necessary to give effect to the conditions of this consent and planning permission, site investigations or surveys.

“the Company” means Cloich Wind Farm LLP, having its registered office 2 Hunting Gate, Wilbury Way, Hitchin, Hertfordshire ,SG4 0TJ Company No. OC353594.

“construction period” means the period from the commencement of the development until the site compounds have been reinstated in accordance with the conditions of this consent.

“decommissioning of the Development” means the date on which those elements of the Development are permanently decommissioned and removed from the site, in accordance with the conditions of this consent.

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“the Development” means the development described in Annex 1;

“Environmental Statement” means the Environmental Statement submitted by the Company on 8 October 2012 with the Application;

“Final Commissioning” means the earlier of (a) the date on which electricity is exported to the grid on a commercial basis from the last of the wind turbines forming part of the Development erected in accordance with this consent; or (b) the date 18 months after the date of First Commissioning, unless a longer period is agreed in writing in advance by the Planning Authority .

“First Commissioning” means the date on which electricity is first exported to the grid on a commercial basis from any of the wind turbines forming part of the development.

“Greenfield run-off” means the surface water runoff regime from the site before development.

“ground level” means the level of ground recorded at the location where an identified component of the development is to be sited, and reflects its position above Ordnance Datum, as recorded in mapping adopted by Ordnance Survey; reference to height above ground level will necessarily refer to a recorded and agreed numeric height in relation to an agreed ground level description in metric metres (or parts thereof).

“integer wind speed” means the wind speeds between 0.5m/s below and 0.5m/s above each wind speed set of 1m/s.

“LiDAR” is an acronym for Light Detection and Ranging, which is a detection system used to carry out detailed survey of the ground surface.

“Noise level” means the rated noise level due to the combined effect of all the wind turbines at the Cloich Forest wind farm, excluding existing background noise levels but including any tonal penalty incurred under the methodology described in ETSU-R-97, pages 99 -109.

“overburden” means the unwanted top layers of soil, rock, gravel or other earth material (e.g. peat) overlying the principal rock material beneath intended for use.

“Planning Authority ” means Scottish Borders Council.

“rating level noise immissions” means the noise level, as measured by a defined method, after corrections have been made for a tonal content.

“rotor diameter” means the distance identifiable using the outermost external sweep of the blade tips of a wind turbine, being the distance from arc to opposite arc across the central hub following a straight line.

“Schedule 1 Raptor” means bird of prey protected under Schedule 1 of the Wildlife and Countryside Act 1981.

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“Supplementary Environmental Information” means the Supplementary Environmental Information submitted on 31 January 2014.

“SEPA” means the Scottish Environmental Protection Agency.

“site” means the area of land outlined in red on the boundary map attached to this consent.

“SNH” means Scottish Natural Heritage.

“standardised wind speed” means a wind speed measured at a height different than 10 metres (generally measured at the turbine hub height) which is expressed to a reference of 10 metres using a roughness length of 0.05 for standardisation purpose (in accordance with IEC 61400-11 standard).

“SUDS” is an acronym for Sustainable Urban Drainage Systems, meaning a sequence of water management practices and facilities designed to drain surface water in a manner that will provide a more sustainable approach than conventional routing run-off through a pipe to a watercourse.

“swept path analysis” means the calculation and analysis of the movement and path of different parts of a vehicle when that vehicle is undertaking a turning manoeuvre.

“tonal component” means the concentration of acoustic energy into a narrow band frequency range.

“tonal penalty” is the tonal penalty derived from the margin above audibility of the tone according to the figure below:

